

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF EXCHANGE APPLICATION )  
 )  
NUMBER E2693 (55-Area) )

MEMORANDUM DECISION

Exchange Application Number E2693 (55-Area) was filed by USA Bureau of Reclamation on July 11, 1989, to exchange 2.0 cfs, up to a maximum of 1445.0 acre-feet annually, of Provo River Project water stored in Deer Creek Reservoir, and evidenced by an agreement with the Metropolitan Water District of Salt Lake City (MWDSL). The USA Bureau of Reclamation further has an agreement with Utah Power and Light Company (UP&L) which allows the applicant to divert up to 2.0 cfs of UP&L's water right in the Ontario Drain Tunnel and replace the water to UP&L downstream by the release of water from Deer Creek Reservoir under the agreement the applicant has with MWDSL.

Under the exchange application the applicant proposes to divert 2.0 cfs, and up to a maximum of 1445.0 acre-feet annually, from the Provo River and tributary streams, and/or shallow wells adjacent to the streams, at 19 different points of diversion downstream from the portal of the Ontario Drain Tunnel. These points are located in Sections 29 through 35, T2S, R5E, SLB&M and in Section 32, T2S, R6E, SLB&M. The water will be used for general construction purposes related to the construction of Jordanelle Dam.

The exchange application was advertised in the Wasatch Wave from August 9, 1989 to August 23, 1989. Protests were received from United Park City Mines Company and Midway Irrigation Company, expressing concern about impairment of their rights in the Ontario Drain Tunnel. The former urges the State Engineer to approve the exchange application with sufficient conditions regarding metering of diversions, submission of meter records, and diversion limitations to assure that the protestant's rights are not impaired. The latter protestant requests that the exchange application be rejected.

A hearing was held on November 29, 1989, at Heber City, Utah. A representative for the applicant stated that the exchange application was filed to provide additional water for the construction of Jordanelle Dam. Presently, the applicant is using water under an approved temporary change application based on rights it acquired with the land; however, more water may be needed as construction proceeds. Amounts of water diverted have been accounted for by keeping a record of the number of truckloads used.

Representatives for Midway Irrigation Company stated that the Company has a right to the first 5.5 cfs of water out of the Ontario Drain Tunnel, plus one-half of the flow in excess of 5.5 cfs which it rents from United Park City Mines Company. They asserted that last year the Company did not receive its water entitlement. The Company wants assurance that the applicant will not just take water when it is needed without regard to the Company's rights.

The State Engineer has reviewed the exchange application, protests, pertinent water rights, water supply records, and the hydrologic regimen of the Provo River system. He has noted the following:

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- a. Paragraph 48(bn)(I), page 41, Provo River Decree, Civil 2888, awards 5.5 cfs of water from the Ontario Drain Tunnel to Midway Irrigation Company; Paragraph 33(e), page 41, awards one-half the flow in excess of 5.5 cfs to Utah Power and Light Company. Hence, in order for the applicant to be able to divert a maximum of 2.0 cfs under the exchange application the flow of the Ontario Drain Tunnel must be 9.5 cfs or greater.
- b. The State Engineer has reviewed the Provo River Commissioner's Annual Reports for the last 20 years (1970-1989) and determined that the reported flow of the Ontario Drain Tunnel was equal to or greater than 9.5 cfs over 90 percent of the time throughout the entire year, and approximately 80 percent of the time during the irrigation season. Only three days in the 20-year period was the flow reported to be less than 5.5 cfs.
- c. Historically, water under UP&L's right in the Ontario Drain Tunnel was used in the Orem area, with return flow to northern Utah Valley. Under the exchange application the same water use and return flow patterns would occur with the storage water released from Deer Creek Reservoir.

In view of the foregoing, it is the opinion that the exchange can be implemented without impairing existing rights if certain conditions are imposed.

It is, therefore, ORDERED and Exchange Application Number E2693 (55-Area) is hereby APPROVED subject to all prior rights and the following conditions:

1. The maximum rate of diversion under the exchange application shall not exceed one-half of the flow of the Ontario Drain Tunnel in excess of 5.5 cfs or 2.0 cfs, whichever is the lesser quantity. This exchange shall remain in effect only as long as the agreements between the applicant and Utah Power and Light Company and between the Metropolitan Water District of Salt Lake City are valid and the terms of the agreements are met.
2. The applicant shall install and maintain in good working condition, totalizing meters on all of its diversion works to measure the amount of water diverted from the Provo River and/or its tributaries. The meter shall be available for inspection at all reasonable times as may be required by the State Engineer and the Provo River Commissioner. By the fifth day of each month the applicant shall submit a written report to the State Engineer and the Provo River Commissioner which shows the total quantity of water diverted during the

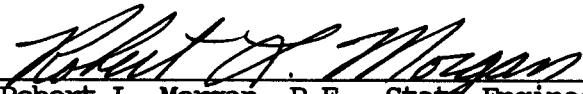
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preceding month, and also stating if the diversion was made under the exchange application or under an approved temporary change application. Furthermore, the total quantity of water diverted annually shall be reported by the Provo River Commissioner in his annual report to the State Engineer.

3. Storage water being exchanged shall be released to the Provo River from Deer Creek Reservoir as called for by the Provo River Commissioner.
4. Any additional costs incurred by the Provo River Commissioner in the administration of this exchange application shall be borne by the applicant. The amount of such costs shall be determined by the Provo River Commissioner and/or the State Engineer.

This Decision is subject to the provisions of Rule R625-6-17 of the Division of Water Rights and to Sections 63-46b-13 and 73-3-14 of the Utah Code Annotated, 1953, which provide for filing either a Request for Reconsideration with the State Engineer or an appeal with the appropriate District Court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of this Decision. However, a Request for Reconsideration is not a prerequisite to filing a court appeal. A court appeal must be filed within 30 days after the date of this Decision, or if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken 20 days after the Request is filed.

Dated this 11th day of May, 1990.

  
Robert L. Morgan, P.E., State Engineer

RLM:EDF:lz:rc

Mailed a copy of the foregoing Memorandum Decision this 11th day of May, 1990, to:


USA Bureau of Reclamation  
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By:   
Robin Campbell, Secretary